

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MATTHEW MCDERMOTT,
Plaintiff,

- against -

CABLE NEWS NETWORK, INC.

Defendant.

Docket No. _____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Matthew McDermott (“McDermott” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant Cable News Network, Inc. (“CNN” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photograph of Farimah Kashkooli, owned and registered by McDermott, a New York City based photojournalist. Accordingly, McDermott seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides and/or transacts business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. McDermott is an award-winning professional photojournalist in the business of licensing his Photograph to online, print, and television stations for a fee, having a usual place of business at 28-07 Newtown Avenue, Astoria, New York 11102. McDermott's photographs have had a profound effect helping to stimulate the global heart of giving, leading to the contribution of millions of dollars to charities and worldwide humanitarian efforts. McDermott's work from Haiti's earthquake devastated streets inspired a generous outpouring of support especially by his "Kiki" photo, the young boy rescued unharmed with arms stretched in joy after being trapped under rubble for eight days. Some of McDermott's international projects include the documentation of Dafur's genocide survivors and the humanitarian relief efforts brought to that region, wide spread famine in Niger, detainees at Cuba's Guantanamo Bay, the massive earthquake devastation in Pakistan, to the struggles in Beirut, Belfast, Kosovo, and others. Nationally, McDermott captured the horrific events of the 9/11 World Trade Center attacks, human suffering in New Orleans after Hurricane Katrina, and the local efforts upon the Gulf's fishing community following the massive BP oil spill.

6. Upon information and belief, CNN is a foreign profit corporation duly organized and existing under the laws of the State of Delaware, with a principal place of business at One CNN Center, Atlanta, GA 30303. At all times material hereto, CNN has owned and operated a television network known as CNN and produces the television show New Day (the "Show").

STATEMENT OF FACTS

A. Background and Plaintiff's Ownership of the Photograph

7. McDermott captured Farimah Kashkooli in her Manhattan Apartment while her daughter was stuck in Iran (the “Photograph”). A true and correct copy of the Photograph is attached hereto as Exhibit A.

8. McDermott is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

9. The Photograph has a pending United States Copyright Office number. The pending application number is 1-4732084201. See Exhibit B.

10. The fee has been paid to the United States Copyright Office and the works have been deposited with the Copyright Office.

B. Defendant’s Infringing Activities

11. Upon information and belief, on or about February 7, 2017, CNN ran a story on their Show entitled *Mother & Daughter Reunite After Travel Ban*. The Show prominently featured the Photograph. A true and correct copy of the Show with the Photograph is attached hereto as Exhibit C.

12. CNN did not license the Photograph from Plaintiff nor did CNN have Plaintiff’s permission or consent to publish the Photograph on its Show.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST CNN)
(17 U.S.C. §§ 106, 501)

13. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-12 above.

14. CNN infringed Plaintiff’s copyright in the Photograph by reproducing and publicly displaying the Photograph on the Show. CNN is not, and has never been, licensed or otherwise authorized to reproduce, publicly display, distribute and/or use the Photograph.

15. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

16. Upon information and belief, the foregoing acts of infringement by CNN have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

17. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

18. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendant's willful infringement of the Photograph, pursuant to 17 U.S.C. § 504(c).

19. Plaintiff further is entitled to his attorney's fees and full costs pursuant to 17 U.S.C. § 505.

20. Defendant's conduct, described above, is causing, and unless enjoined and restrained by this Court, will continue to cause Plaintiff irreparable injury that cannot be fully compensated by or measured in money damages. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant CNN be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. Plaintiff be awarded either: a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;

3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded his costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 505;
5. That Plaintiff be awarded pre-judgment interest; and
6. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
April 11, 2017

LIEBOWITZ LAW FIRM, PLLC
By: /s/Richard Liebowitz
Richard P. Liebowitz
11 Sunrise Plaza, Suite 305
Valley Stream, NY 11580
Tel: (516) 233-1660
RL@LiebowitzLawFirm.com

Attorneys for Plaintiff Matthew McDermott